

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.S-1707 of 2015

Date of hearing: 05-01-2016.
Date of decision: 15-01-2016.
Applicant: Mohammad Tariq through Mr. Nasrullah Malik, advocate.
Respondent: The State through Ms. Seema Zaidi, learned A.P.G. Sindh.

ORDER.

MAHMOOD AHMED KHAN, J: - Through instant criminal bail application under section 497 Cr.P.C., the applicant Mohammad Tariq seeks post arrest bail, in crime No.05 / 2015 of PS Anti Encroachment Force, Karachi, under section 8 (1) of Sindh Public Property) Removal of Encroachment) Act, 2010. Earlier bail plea of the applicant was turned down by the learned Judge, Special Court Sindh Public Property (Removal of Encroachment) Karachi vide order dated 21-12-2015.

2. Brief facts of the prosecution case as per FIR are that on 29.11.2015, complainant Aijaz-ul-Hassan lodged instant case stating therein that he is Mukhtiarkar of Ibrahim Hyderi, District Malir and supervising Tapedar of Deh Rehri, Ali Gul Kalwar informed him that about 42-00 acres land in Na-Class No.26, Deh Rehri, under supervision of the well-known land grabbers namely Ameer Ahmed Chori Wala s/o Qadeer Ahmed (2) Mohammad Yaqoob s/o Mohammad Ibrahim (3) Mohammad Faisal s/o Mohammad Akhtar (4) Naeem Masih s/o Waliat Masih (5) Kamran Qadri s/o not known (6) Masoom s/o not known (7) Ghaffar s/o not known (8) Sharif s/o not known (9) Abdul Jabbar s/o not known (10) Shahid Khan s/o Abdul Sattar (11) Mohammad Tariq s/o Waliat Masih are illegally selling the government land. On such information, the complainant informed to A.C Ibrahim Hyderi, who directed to issue notices under section 8 (1) SPPA 2010, on which complainant issued notices but despite receiving notices, the above named land grabbers did not contact with the complainant or Assistant Commissioner as well as before Anti Encroachment Tribunal. Consequently, instant FIR was lodged. Applicant Mohammad Tariq was already arrested in FIR No.03 / 2015 and 04/ 2015 of same police station.

3. Learned counsel for the applicant has contended that the present applicant is innocent and has been falsely implicated in the instant case due to enmity and on the behest of one Mohammad Aslam Qureshi, otherwise he has no concern with the alleged land as he is only having dispute with the said person in respect of a distinct and separate land situated in S. No.145 although in the same deh. He further contended that and in respect of the said land present applicant filed a C.P bearing No.S-1552 / 2015 for protection against said Mohammad Aslam Qureshi and others as

the said Mohammad Aslam Qureshi tried to dispossess the applicant from the said land; and, the respondents including Anti Encroachment police were directed to provide legal protection to the applicant. He further contended that the said Mohammad Aslam Qureshi has filed Civil Suit No.2208 / 2015 before this Court on the original side. It is further contended that the applicant was wrongly arrested before the date shown in the record and in this respect applications through TCS which are earlier in time, the acknowledgement on notices were acquired back dated during confinement. Learned counsel for the applicant has further pointed that there is delay of about one year in lodging of FIR, without any plausible explanation. It is contended by the learned counsel that the punishment for offence under section 8 (1) of Sindh Public Property (Removal of Encroachment) Act, 2010 is from one year to a maximum of ten years and at the bail stage the lesser punishment is to be considered. Learned counsel has also contended that a co-accused Abdul Ghaffar has been granted post arrest bail by the trial Court, however, on account of vacations, he was unable to obtain certified copy of the said order; he has, however, made the statement in writing to this effect which is taken on record. Lastly he prayed for grant of bail to the present applicant on the ground of rule of consistency as well as consideration of lesser punishment of the offence at bail stage by relying upon the cases reported as 2008 MLD 1079 and 2012 M L D 814.

4. On the other hand, learned A.P.G. appearing for the State has vehemently opposed the grant of bail in favour of applicant on the ground that the applicant is involved in the alleged offence as he is selling the land of government. She has further contended that the applicant was dealing with government land, making allotments in the name of Colombo City and was apprehended being involved in similar matters, as such, the applicant does not deserve the concession of bail.

5. In rebuttal, learned counsel for the applicant contended that there are only four prosecution witnesses, who are complainant Aijaz-u-Hassan, Supervising Tapedar Ali Gul, SIP Shoaib Zaidi and SHO Shabbir Ahmed and not a single private witness is cited by the prosecution who may depose about the allegations against the present applicant, therefore, the contention made by the learned A.P.G. has no force at this bail stage.

6. Heard the arguments advanced by the learned counsel for the applicant, learned A.P.G. for the State and perused the material available on record as well as case law relied upon by the learned counsel for the applicant.

7. At the time of writing of this order the police file was examined wherein it was found that statement of two private witnesses namely Salahuddin s/o Shafiuddin and Tasleem Ahmed s/o Muhammad Anis were examined by the Investigating Officer but for the reasons best known to the I.O they have not been included in the challan submitted. Perhaps the learned State Counsel has only considered the challan. This aspect is however to be considered by the trial Court as bail in the matter is not being considered on this ground.

8. It is a matter of record the incident is said to have taken place on 15.12.2014 whereas, FIR is lodged on 22.11.2015, i.e. after about a delay of almost one year. Perusal of the contents of the FIR would reveal that no explanation with regard to such delay of one year in lodging the FIR is given except that it is attributed to the complainant. In respect to the previous litigation it was specifically asked from the learned counsel for the applicant if the land as described therein has ever been verified by the Board of Revenue to be belonging to the alleged owner, to which he has denied but referred to documents therein. It cannot be ruled out that the land in respect of which the civil suits have been filed are different than that where the alleged crime took place. In the matter as such, perhaps the only two grounds available to the applicant / accused are (1) delay in lodging of the FIR, which is about one year and (2) the consideration of the lesser punishment as held available in the reported case of 'ZAHID MASEEH and another v. THE STATE' reported in 2012 M L D 814. The learned counsel for the applicant has also submitted the copy of the order in respect of co-accused namely Abdul Ghaffar, who was granted bail by the learned trial Court in the sum of Rs.50,000/-, however, as per learned counsel before the trial Court his case was distinguishable and as such, the rule of consistency will not be available with the present applicant / accused.

9. The case is already been challaned and the applicant / accused is no more required for the purpose of investigation, as such, no useful purpose will be served in keeping him behind the bars. The offence is not punishable for death or imprisonment for life; the offence under section 8 (1) of Sindh Public Property (Removal of Encroachment) Act, 2010 is punishable with imprisonment of either description for a terms which may extend to ten years but not less than one year and at the bail stage, the principle of lesser punishment may be considered in appropriate / associated circumstances, which is one year, reference in this regard is available in the case of 'ZAHID MASEEH and another v. THE STATE' reported in 2012 M L D 814 when the principle of considering the alternate lesser sentence has been provided.

10. In view of above facts and circumstances, the applicant is granted bail subject to his furnishing a solvent surety in the sum of Rs.200,000/- (Rupees two hundred thousand) and PR bond in the like amount, to the satisfaction of the learned trial Court.

11. It is made clear that the observations made here in above being tentative in nature, shall not prejudice the case of either party before the learned trial Court.

J U D G E

Dated: 15-01-2016.

****Abdullah Channa/PS****